IN THE SUPREME COURT OF THE STATE OF NEVADA

In the matter of Alfred Chartz, Esq., for Contempt

DECISION

Respondent was commanded to show cause whw he should not be adjudged guilty of contempt for having, as an attorney of record in the matter of the application of Peter Kair for a Writ of Habeas Corpus filed in this court a petition for rehearing in which he made use of the following statement:

"In my opinion, the decisions favoring the power of the State to limit the hours of labor, on the ground of the police power of the State, are all wrong, and written by men who have never performed manual labor, or by politicians and for politics. They do not know what they wrote about."

Respondent apeared in response to the citation, filed a brief and made an extended address to the Court in which he took the position that the words in question were not contemptuous; disavowed any intention to commit a contempt of court; and, further that if the langauge was by the court deemed to be objectionable, he apologized for its use and asked that the same be stricken from the petition.

In considering the foregoins statement it is proper to note that in the briefs filed by Respondent upon the hearing of the case in the first instance, he used language of similar import which this court did not take cognizance of, attributing its use to over zealousness upon the part of counsel, but which was of such a nature that the Attorney General in his reply brief referred to it as insinuating that the Legislature in enacting and this court in sustaining the law were being "impelled or controlled by some mythical political influence or fear., which exists only in the pyrotechnic imigination of counsel."

Also, the case and its condition at the time the objectionable langauge was used, should be taken into consideration. The proceeding, in which the petition was filed, had been brought to test the constitutionality of a section of an Act of the Legislature limiting labor to eight hours per day in smelters and other ore reduction works, except in cases of emergency where life or property is in imminant danger. Stat. 1903, p. 32. This Act had passed the Legislature almost unanimously and had received the Governor's approval. At the time of filing the petition, respondent was aware that the court had previously sustained the validity of the enactment as limiting the hours of labor in underground mines, Re Boyce, 27 Nev. 327, 75 P. L, 65 L. R. A. 47, and in mills for the reduction of ores, Re Kair 28 Nev. 80 P. 464, and that similar statutes had been upheld by the Supreme Court of Utah and the Supreme Court of the United States in the cases of State v. Holden, 14 Utah 71 and 86, 46 P. 757 and 1105, 37 L. R. A. 103 and 128; Holden v Hardy 169 U. S. 366, 18 Sup. Ct. 383; Short v. Mining Company, 20 Utah, 20, 57 P. 720, 45 L. R. A., 603, and by the Supreme Court of the State of Missouri re Cantwell, 179 Mo. 245, 78 S. W. 569. It may not be out of place here, also to note that the latter case has since been affirmed by the Supreme Court of the United States, and more recently the latter tribunal, adhering to its opinion therein and in the Utah cases, has refused to interfere with the decisions of this Court in re Kair.

It would seem therefore, a natural and proper, if not a necessary deduction from the language in question, when taken in connection with the law of the cases as enunciated by this and other courts, that counsel, finding that the opinion of the highest court in the land was adverse instead of favorable to his contentions, in that it specifically affirmed the Utah decision in Hoden vs. Hardy, which sustained the statute from which ours is copied, and that all the courts named were adverse to the views he advocated, had resorted to abuse of the Justices of this and other courts, and to imputations of their motives.

The language quoted is tantamount to the charge that this tribunal and the Supreme Courts of Utah, Missouri and of the United States and the Justices thereof who participated in the opinions upholding statutes limiting the hours of labor in mines, smelters and other ore reduction works, were misguided by ignorance or base political considerations.

Taking the most charitable view, if counsel became so imbued and misguided by his own ideas and conclusions that he honestly and erroneously conceived that we were controlled by ignorance or sinister motives instead of by law and justice in determining constitutional or other questions, and that these other courts and judges and the members of the legislature and Governor were guilty of the accusation he made because they and we failed to follow the theories he advocated, and that his opinions ought to outweigh and turn the scale against the decisions of the four courts named including the highest in the land with nineteen justices concurring, nevertheless it was entirely inappropriate to make the statement in brief.

If he really believed or knew of facts to sustain the charge he made he ought to have been aware that the purpose of such a document is to enlighten the court in regard to the controlling facts and the law, and convince by argument, and not to abuse and vilify, and that this court is not endowed with power to hear or determine charges impeaching its Justices. On the other hand if he did not believe the accusation and made it with a desire to mislead, intimidate or swerve from duty the Court in its decision, the statement would be the more censurable. So that taking either view, whether respondent believed or disbelieved the heinous charge he made, such langauge is unwarranted and contemptious. The duty of an attorney in his brief or argument is to assist the court in ascertaining the truth pertaining to the pertinent facts, the real effect of decisions and the law applicable in the case, and he far oversteps the bounds of professional conduct when he reports to misrepresentation, false charges or vilification.

He may fully present, discuss and argue the evidence and the law and freely indicate wherein he believes that decisions and rulings are wrong or erroneous, but this he may do without effectually making bald accusations against the motives and intelligence of the court, or being discourteous or resorting to abuse which is not argument nor convincing to reasoning minds. If respondent has no respect for the justices, he ought to have enough regard for his position at the bar to refrain from attacting the tribunal of which he is a member, and which the people, through the Constitution and by general consent have made the final interpreter of the laws which he, as an officer of the court, has sworn to uphold and protect.

These duties are so plain that any departure from them by a member of the bar would seem to be willful and intentional misconduct.

The power of courts to punish for contempt and to maintain dignity in their proceedings is inherent and is as old as courts are old. It is also provided by statute. By analogy we note the adjudications and penalties imposed in a few of the many cases.

Lord Cottingham imprisoned Edmund Lechmere Charlton a barrister and member of the House of Commons for sending a scandalous letter to one of the masters of the court and a committee from that body, after an investigation, reported that in their opinion his "claim to be discharged from imprisonment by reason of privilegde of parliament ought not to be admitted." 2 Milne and Craig, 317.

When the case of People vs. Tweed in New York came up a second time before the same judge, before the trial commenced, the prisoner's counsel privately handed to the judge a letter couched in respectful language, in which they stated, substantially, that their client feared, from the circumstances of the former trial, that the judge had conceived a prejudice against him, and that his mind was not in the unbiased condition necessary to afford an impartial trial, and respectfully requested him to consider whether he should not relinquish the duty of presiding at the trial to some other judge, at the same time declaring that no personal disrespect was intended toward the judge of the court. The judge retained the letter and went on with the trial. At the end of the trial he sentenced three of the writers to a fine of $250 each, and publically reprimanded the others, the junior counsel, at the time expressing the opinion that if such a thing had been done by them in England, they would have been "expelled from the bar within one hour." The counsel at the time protested that they intended no contempt of court and that they felt and intended to express no disrespect for the judge but that their action had been taken in furtherance of what they deemed the vital interests of their client and the faithful and conscientious discharge of their duty. The judge accepted the disclaimer of personal disrespect, but refused to believe the disclaimer of intention to commit a contempt and enforced the fines. 11 Albany Law Journal 408, 26 Am. R. 752.

For sending to a district judge out of court a letter stating that "The ruling you have made is directly contrary to every principal of law, and every body knows it I believe and it is our desire that no such decision shall stand unreversed in any court we practice in," an attorney was fined $50 and suspended from practice until the amount should be paid. In delivering the opinion of the Supreme Court of Kansas in Re Prior, 18 Kan. 72. 26 Am., 747, Brewer J., said:

"Upon this we remark, in the first place that the language of this letter is very insulting. To say to a judge that a certain ruling which he has made is contrary to every principle of law and that everybody knows it, is certainly a most severe imputation.

We remark, secondly, that an attorney is under special obligations to be considerate and respectful in his conduct and communications to a judge. He is an officer of the court, and it is therefore his duty to uphold its honor and dignity. The independence of the profession carries with it the right freely to challenge, criticise and condemn all matters and things under review and in evidence. But with this privilege goes the corresponding obligation of constant courtesy and respect toward the tribunal in which the proceedings are pending. And the fact that the tribunal is an inferior one, and its rulings not final and without appeal, does not diminish in the slightest degree this obligation of courtesy and respect. A justice of the peace before whom the most trifling matter is being litigated is entitled to receive from every attorney in the case corteous and respectful treatment. A failure to extend this courtesy and respectful treatment is a failure of duty; and it may be so gross a dereliction as to warrant the exercise of the power to punish for contempt.

It is so that in every case where a judge decides for one party, he decides against another; and oftimes both parties are before hand equally confident and sanguine. The disappointment, therefore, is great, and it is not in human nature that there should be other than bitter feeling which often reaches to the judge as the cause of the supposed wrong. A judge, therefore, ought to be patient and tolerate everything that appears but the momentary outbreak of disappointment. A second thought will generally make a party ashamed of such an outbreak. So an attorney sometimes, thinking it a mark of independence, may become want to use contemptuous, angry or insulting expressions at every adverse ruling until it become the court's clear duty to check the habit by the severe lesson of a punishment for contempt. The single insulting expression for which the court punisres may therefore seem to those knowing nothing of the prior conduct of the attorney, and looking only at the single remark, a matter which might well be unnoticed; and yet if all the conduct of the attorney was known, the duty of interference and punishment might be clear

We remark finally, that while from the very nature of things the power of a court to punish for contempt is a vast power, and one which, in the hands of a corrupt or unworthy judge may be used tyrannically and unjustly, yet protection to individuals lies in the publicity of all judicial proceedings, and the appeal which may be made to the legislature for proceedings against any judge who proves himself unworthy of the power intrusted to him."

Where a contention arose between counsel as to whether a witness had not already answered a certain question, and the court after hearing the reporter's notes read, decided that she had answered it, whereupon one of the attorneys sprang to his feet, and, turning to the court, said, in a loud tone and insulting manner: "She has not answered the question" held that the attorney was guilty of contempt regardless of the question whether the decision of the court was right or wrong." Russell v. Circuit Judge, 67 Iowa, 102.

In Sears v. Starbird, 75 Cal. 91, 7 Am. St. 143, a brief reflecting upon the trial judge was stricken from the record in the Supreme Court, because it contained the following:

"The court, out of a fullness of his love for a cause, the parties to it or their counsel, or from an overzealous desire to adjudicate all matters, points, arguments and things,' could not, with any degree of propriety under the law, patch and doctor up the cause of the plaintiffs, while, perhaps, the carelessness of their counsel had left in such a condition as to entitle them to no relief whatever."

In reference to this language it was said in the opinion:

"There is a manifest intimation that the judge of the court below did not act from proper motives, but from a love of the parties or their counsel. We see nothing in the record which suggests that such was the case. On the contrary, the action complained of seems to us to have been entirely proper: See Sil v. Reese, 47 Cal. 340. The brief, therefore contains a groundless charge against the purity of motive of the judge of the court below. This we regard as a grave breach of professional propriety. Every person on his admission to the bar takes an oath to 'faithfully discharge the duties of an attorney and counselor.' Surely such a course as was taken in this case is not in compliance with that duty. In Friedlander v. Sumner G. & S. M. Co., 61 Cal. 117. The court said:

'If unfortunately counsel in any case shall ever so far forget himself as willfully to employ langauge manifestly disrespectful to the judge of the superior court—a thing not to be anticipated—we shall deem it our duty to treat such conduct as a contempt of this court, and to proceed accordingly; and the briefs of the case were ordered to be stricken from the files."

In U. S. v. Late Corporation of Church of Jesus Christ of Later Day Saints, language used in the petition filed in effect accusing the court of an attempt to shield its receiver and his attorneys from an investigation of charges of gross misconduct in office and containing the statement that "We must decline to assume the functions of a grand jury, or attempt to perform the duty of the court in investigating the conduct of its officers, "was held to be contemptuous. 211 P. 519.

In re Terry, 36 Fed. 419 an extreme case, for charging the court with having been bribed, resisting removal from the court room by the marshal acting under an order from the bench and using abusive language, one of the defendants was sent to jail for thirty days and the other for six months. Judge Terry, who had not made any accusation against the court sought release and to be purged of the contempt by a sworn petition in which he alleged that in the transaction he did not have the slightest idea of showing any disrespect to the court. It was held that this could not avail or relieve him and it was said:

"The law imputes an intent to accomplish the natural result of one's acts, and, when those acts are of a criminal nature, it will not accept, against such implication the denial of the transgressor. No one would be safe if a denial or a wrongful or criminal intent would suffice to realese the violator from the punishment due in his offenses."

In an application for a writ of habeas corpus growing out of that case, Justice Harlan, speaking for the Supreme court of the United States said:

"We have seen that it is a settled doctrine in the jurisprudence both of England and of this country, never suposed to be in conflict with the liberty of the citizens, that for direct contempt committed in the face of the court, at least one of superior jurisdiction, the offender may in its discretion, be instantly apprehended and immediately imprisoned, without trial or issue, and without other proof than its actual knowledge of what occurred; and that according to an unbroken chain of authorities, reaching back to the earliest times, such power, although arbitrary in its nature and liable to abuse, is absolutely essential to the protection of the courts in the discharge of their functions. Without it judicial tribunals would be at the mercy of the disorderly and violent, who respect neither the laws enacted for the vindication of public and private rights, nor the officers charged with the duty of administering them." 128 U. S. 313.

In re Wall, 91 Ky. 30, it was held that to incorporate into a petition for rehearing a statement that "Your Honors have rendered an unjust decree," and the insulting matter, is to commit in open court an act constituting a contempt on the part of the attorney; and that where the language spoken or written is of itself necessarily offensive, the disavowal of an intention to commit a contempt may tend to excuse but cannot justify the act. From a paragraph in that opinion we quote:

"An attorney may unfit himself for the practice of his profession by the manner in which he conducts himself in his intersourse with the courts. He may be honest and capable, and yet he may so conduct himself as to continually interrupt the business of the courts in which he practices; or he may by a systematic and continuous course of conduct, render it impossible for the courts to preserve their self-respect and the respect of the public and at the same time permit him to act as an officer and attorney. An attorney who thus studiously and systematically attempts to bring the tribunals of justice into public contempt is an unfit person to hold the position and exercise the privileges of an officer of those tribunals. An open notorious and public insult to the highest judicial tribunal of the State for which an attorney contumaciously refuses in any way to atone, may justify the refusal of that tribunal to recognize him in the future as one of its officers."

In re Cooper, 32 Vt. 262, the respondent was fined for ironically stating to a justice of the peace, "I think this magistrate wiser than the Supreme court." Redfield, C. J., said:

"The counsel must submit in a justice court as well as in this court, and with the same formal respect, however difficult, it may be either here or there."

"We do not see that the relator has any alternative left him but the submission to what we no doubt regards as a misapprehension of the law, both on the part of the justice and of this court. And in that respect he is in a condition very similar to many who have failed to convince others of the soundness of their own views, or to became convinced themselves of their falacy."

In Mahoney v. State, 72 N. J. 151, an attorney was fined $50 for saying "I want to see whether the court is right or not I want to know whether I am going to be heard in this case in the interests of my client or not," and making other insolent statements. In Redman v. State 28 Ind., the judge informed counsel that a question was improper and the attorney replied: "If we cannot examine our witnesses he can stand aside." This language was deemed offensive and the court prohibited that particular attorney from examining the next witness.

In Brown v. Brown IV Ind. 72, the lawyer was taxed with the cost of the action for filing and reading a petition for divorce which was unnecessarily gross and indelicate.

In McCormick v. Sheridan, 20 P. 94 78. Cal. "A petition for rehearing stated that 'how or why the honorable commission should have so effectually and substantially ignored and disregarded the uncontradicted testimony we do not know. It seems that neither the transcript nor our briefs could have fallen under the commissioners observation. A more disingenious and misleading statement of the evidence could not well be made. It is substantially untrue and unwarranted. The decision seems to us to be a traversity of the evidence." Held that counsel drafting the petition was guilty of contempt committed in the face of the court, notwithstanding a disavowal of disrespectful intention. A fine of $200 was imposed with an alternative of serving in jail.

The Chief Justice speaking for the court in State v. Morrill, 16 Ark. 310 said:

"If it was the general habit of the community to denounce, degrade, and disregard the decisions and judgments of the courts, no man of self-respect and just pride of reputation would remain upon the bench, and such only would become the ministers of the law as were insensible to defamation and contempt. But happily for the good order of society, men, an especially the people of this country, are generally disposed to respect and abide the decisions of the tribunals ordained by government as the common arbiters of their rights. But where isolated individuals, in violation of the better instincts of human nature, and disregardful of law and order, wontanly attempt to obstruct the course of public justice by disregarding and exciting disrespect for the decisions of its tribunals, every good citizen will point them out as proper subjects for legal animadversion.

A court must naturally look first to an enlightened and conservative bar, governed by a high sense of professional ethics and deeply sensible, as they always are, of its necessity to aid in the maintenance of public respect for its opinions."

In Somers v. Torrey, 5 Paige Ch. 64 28 Am. D. 411, it was held that the attorneyw ho put his hand to scandalous and impertinent matter stood against the complainant and one not a party to the suit is liable to the censure of the court and chargeable with the cost of the proceedings to have it expunged from the record.

In State v. Grailhe, 1 La. Am. 183, the court held that it could not consistently with its duty receive a brief expressed in disrespectful language, and ordered the clerk to take it from the files.

Referring to the rights of courts to punish for contempt, Blackford, J., in State v. Tipton, 1 Blackf. 166, said:

"This great power is entrusted to these tribunals of justice or the support and preservation of their respectability and independence; it has existed from the earliest period to which the annals of jurisprudence extend, and, except in a few cases of party violence, it has been sanctioned and established by the experience of ages." Lord Mayor of London's case, 2 Wilson, 188; opinion o. Kent C. J., in the case of Yates 4 Johns, 317; Johnson v. The Commonwealth 1 Bibb 598.

At page 206 of Weeks on Attorneys, 2d edition it is said:

"Language may be contemptuous whether written or spoken; and if in the presence of the court, notice is not essential before punishment, and scandalous and insulting matter in a petition for rehearing is equivalent to the commission in open court of an act constituting a contempt. When the language is capable of explanation, and is explained, the proceedings must be discontinued; but where it is offensive and insulting per se, the disavowal of an intention to commit a contempt may tend to excuse, but cannot justify the act. From an open, notorious and public insult to a court for which an attorney contumaciously refused in any way to atone, he was fined for contempt, and his authority to practice revoked."

Other authorities in line with those we have mentioned are cited in the note to re Cary, 10 Fed. 674, and in 9 Cyc. 1. 20, where it is said that contempt may be committed by inserting in pleadings, briefs, motions, arguments, petitions for rehearing or other papers filed in court insulting or contemptuous language, reflecting on the integrity of the court.

By using the objectionable language stated resmondent became guilty of a contempt which no construction of the words can excuse or purge. His disclaimer of an intentional disrespect to the court may palliate but cannot justify a charge which under any explanation cannot be construed otherwise than as reflecting on the intelligence and motives of the court, and which could scarcely have been made for any other purpose unless to intimidate or improperly influence our decision.

As we have seen, attorneys have been severely punished for using language in many instances not so reprehensible, but in view of the disavowal in open court we have concluded not to impose a penalty so harsh as disbarment or suspension from practice, or fine or imprisonment.

Nor do we forget that in proceeding against the misconduct of attorneys litigants ought not to be punished or prevented from appearing in the case all petitions, pleadings, and papers essential to the preservation and enforcement of their rights.

It is ordered that the offensive petition be stricken from the files, that respondent stand reprimanded and warned, and that he pay the costs of this proceeding.

Talbot, J.

I concur

Norcross, J.

In this matter my concurrence is special and to this extent:

The language used by the respondent in his petition for a re-hearing and on which the contempt proceeding was based, was, in my opinion, contemptuous of this court; and, of course, should not have been used. The respondent however, in response to the order of the court to show cause why he should not be punished therefor, appeared and disclaimed any intention to be disrespectful or contemptuous; and moved that if the Court deemed the language contemptuous, the said language be stricken out of his petition.

Respondent not only contended and said that he had no intention to be disrespectful or contemptuous, but he also earnestly contended that the language charged against him and which he admitted having used was not disrespectful or contemptuous. In the last contention, I think he was plainly in error.

The duty of courts in matters of this kind is indeed an unpleasant one, such at least it has always appeared to me. Yet it must sometimes be done.

Therefore, I concur in the conclusion reached and in the order stated in the opinion of Justice Talbot, to-wit:

"It is ordered that the offensive petition be stricken from the files, that respondent stand reprimanded and warned, and that he pay the costs of this proceeding.

Fitzgerald, C. J.

ANNUAL STATEMENT

Of The Continental Casualty Company Of Hammond Indiana.

General office, Chicago, Ills.

Capital (paid up)	$ 200,000 00
Assets	1,708,611 28
Liabilities, exclusive of capital and net surplus	1,157,611 70

Income

Premiums	2,129,749 64
Other sources	30,476 72
Total income, 1905	2,160,226 36

Expenditures

Losses	993,904 82
Dividends	16,500 00
Other expenditures	1,113,131 64
Total expenditures, 1905	2,123,536 45

Business 1905

Risks written	none
Premiums	2,633,875 53
Losses incurred	1,009,644 81

Nevada Business

Risks written	none
Premiums received	20,025 56
Losses paid	8,544 59
Losses incurred	8,634 52

A. A. SMITH, Secretary.

The Sierra Nevada mining company received $2,722.67 from leasers operating on Cedar Hill during the month of February.

SPECIAL EXCURSION FROM SAN FRANCISCO TO CITY OF MEXICO AND RETURN. DECEMBER 16th, 1905.

A select party is being organized by the Southern Pacific to leave San Francisco for Mexico City, December 16th, 1905. Train will contain fine vestibule sleepers and dining car, all the way on going trip. Time limit will be sixty days, enabling excursionists to make side trips from City of Mexico to points of interest. On return trip, stopovers will be allowed at points on the main lines of Mexican Central, Santa Fe or Southern Pacific. An excursion manager will be in charge and make all arrangements.

Round trip rate from San Francisco $80.00.

Pullman berth rate to City of Mexico, $12.00.

For further information address information Bureau, 613 Market street, San Francisco Cal.

Notice to Hunters.

Notice is hereby given that any person found hunting without a permit on the premises owned by Theodore Winters, will be prosecuted. A limited number of permits will be sold at $5 for the season or 50 cents for one day.

OFFICE COUNTY AUDITOR

To the Honorable, the Board of County Commissioners, Gentlemen:

In compliance with the law, I herewith submit my quarterly report showing receipts and disbursements of Ormsby County, during the quarter ending Dec 30, 1905.

Quarterly Report.

Ormsby County, Nevada.

Balance in County Treasury at end of last quarter	39108 77⅝
County license	699 15
Gaming license	1057 50
Liquor license	282 00
Fees of Co. officers	527 05
Fines in Justice Court	125 00
Rent of Co. biulding	302 50
2nd. Inst taxes	103 13⅜
Slot machine license	282 00
S. A. apportionment school money	5424 48
Deliquent taxes	181 40
Cigarette license	42 30
Douglas Co., road work	18 00
Keep W. Bowen	45 00
Keep C. B. Hall	15 00
Total	48213 59⅜

Recapitulation

April 1st., 06. Balance cash on hand	$31277 17⅜
State fund	713 73⅛
General fund	4212 28⅝
Salary fund	736 64
Co. school fund	47 69
Co. school fund Dist. 1	10158 48½
Co. school fund Dist. 2	189 14
Co. shool fund Dist. 3	277 61⅛
Co. school fund Dist. 4	212 77
State school fund Dist. 1	3859 85
State school fund Dist. 2	216 18
State school fund Dist. 3	433 76
Agl. Assn fund A.	686 12½
Agl. Assn. fund B.	92 16½
Agl. Assn. fund Spcl.	1929 54
Co. school fund Dist.1 Spcl	7290 20
Co. school fund Dist. 1 library	108 40
Co school fund Dist. 3 library	6 50
Co. school fund Dist. 4 library	6 50
Total	$31277 17⅜

H. B. VA NETTEN,
County Treasurer.

Disbursements

General fund	4263 67
Salary fund	2560 00
County school fund	60 00
Co. school fund Dist. 1	338 65
Co. school fund Dist. 2	173 10
Co. school fund Dist. 3	19 85
Co. school fund Dist. 4	122 00
State school fund Dist 1	2611 65
State school fund Dist 2	10 00
State school fund Dist 3	120 00
State school fund Dist 4	110 00
Co. school fund	60 00
Co. school fund Spcl building	6377 50
Total	16936 42

Recapitulation

Cash in Treasury January 1, 1906	39108 77⅝
Receipts from January 1st to March 31st 1906	9104 81¾
Disbursements from January 1st to March 31st 1906	16936 42
Balance cash in Co. Treasury April 1st 1906	31277 17⅜

H. DIETERICH
County Auditor